

CIVIL REVISION

Present:

The Hon'ble Mr. Justice Prasenjit Mandal

Judgment on 03.09.2010

C.O. No.898 of 2009

Pratip Kumar Banerjee.

Versus

Amitava Banerjee & ors.

Points:

Addition of Party - Whether a transferee in violation of interim order of court can be added a party at a stage when the suit is fixed for argument- Code of Civil Procedure, 1908-O1R10

Facts:

The plaintiff/petitioner filed suit for partition. He filed an application for a temporary injunction restraining the defendants from dealing with or disposing of the respective shares in the suit property. That application for injunction was allowed directing the defendants to maintain status quo of the suit property till disposal of the suit. In course of hearing, the opposite parties sought to adduce evidence to the effect that a deed dated January 9, 2002 was executed by the opposite party no.2 in favour of Surinderjit Singh, Smt. Pavittar Kaur, Smt. Sarbojeet Kaur. The said deed was marked as exhibit 'B' after objection. The suit proceeded accordingly and lastly the suit was fixed for delivery of judgment. At that time, the learned Civil Judge directed the plaintiff to take necessary steps for adding these three transferees as defendants to the suit by the impugned order.

Held:

The transferees shall be governed by the doctrine of lis pendence. The transferees had stepped into the shoes of the defendant no.2 and so whatever the decree or order may be passed in the suit, shall be binding upon the subsequent transferees. If the steps as adopted by the learned Trial Judge are supported, it will be nothing but a de novo trial afresh from the stage of adding parties meaning the transferees giving opportunities to file written statement and then to adduce evidence, so on. So, the object of the defendant is nothing but to create a situation so that the plaintiff might not get his remedies/reliefs in the suit for partition. Therefore, the learned Trial Judge has committed errors of law and his findings cannot be supported. Para 6

For the Petitioner : Mr. Jiban Ratan Chatterjee,

Mr. Kaushik Chanda.

For the Opposite party no.3: Mr. Debasish Roy.

For the opposite party no.4: Mr. Amal Kumar Mitra.

Prasenjit Mandal, J.: This application is at the instance of the plaintiff and is directed against the order dated January 27, 2009 passed by the learned Civil Judge (Senior Division), Fourth Court, Alipore in Title Suit No.25 of 1998.

2. The plaintiff/petitioner filed the Title Suit No.25 of 1998 for partition before the learned Civil Judge (Senior Division), Fourth Court, Alipore against the opposite party nos.1 to 3. At the time of filing of the suit, he filed an application under Order 39 Rule 1 of the Code of Civil Procedure praying, inter alia, for a temporary injunction restraining the defendants from dealing with or disposing of the respective shares in the suit property. That application for injunction was heard on March 2, 1998 and the learned Trial Judge directed the defendants to maintain status quo of the suit property till disposal of the application for temporary injunction. The said

order of ad interim order of injunction was made absolute subsequently. The opposite party no.4 filed an application under Order 1 Rule 10(2) of the C.P.C. and that application was allowed on contest. The plaintiff amended the plaint accordingly. In course of hearing, the opposite parties sought to adduce evidence to the effect that a deed dated January 9, 2002 was executed by the opposite party no.2 in favour of Surinderjit Singh, Smt. Pavittar Kaur, Smt. Sarbojeet Kaur. The said deed was marked as exhibit 'B' after objection. The suit proceeded accordingly and lastly the suit was fixed for delivery of judgment. At that time, the learned Civil Judge directed the plaintiff to take necessary steps for adding these three transferees as defendants to the suit by the impugned order. Being aggrieved, the plaintiff has preferred this application.

3. Now the point for determination is whether the impugned order can be sustained.

4. After hearing the learned Advocate for the parties and on going through the materials on record, I find that admittedly, the plaintiff/petitioner filed the suit for partition. In that suit, the defendant no.4 was added subsequently on the basis of his prayer under Order 1 Rule 10(2) of the C.P.C. Both the parties adduced evidence and during the course of examination of the P.Ws., it revealed that the defendant no.2 had sold his share in the suit property to the three transferees mentioned above. Under the circumstances, the learned Trial Judge has directed the plaintiff to take necessary steps for adding them as parties.

5. But the fact remains that at the time of filing of the suit, the plaintiff prayed for temporary injunction and it is an admitted position that the learned Court directed the defendants to maintain status quo with regard to the suit property till disposal of the application for temporary injunction.

Such an ad interim order was passed on March 2, 1998. Thereafter, such order was made absolute. So, during the subsistence of the order of status quo upon the defendants, the defendant no.2, in violation of the Court's order, had transferred his right, title and interest of three subsequent transferees by exhibit 'B'. Therefore, it is crystal clear that in utter violation of the order of status quo, the defendant no.2 had done so. There is no material to show that the defendant no.2 had taken any permission from the Court to transfer his right, title and interest in the suit property to third parties.

6. This being the position, the transferees shall be governed by the doctrine of lis pendence. The transferees had stepped into the shoes of the defendant no.2 and so whatever the decree or order may be passed in the suit, shall be binding upon the subsequent transferees. If the steps as adopted by the learned Trial Judge are supported, it will be nothing but a de novo trial afresh from the stage of adding parties meaning the transferees giving opportunities to file written statement and then to adduce evidence, so on. So, the object of the defendant is nothing but to create a situation so that the plaintiff might not get his remedies/reliefs in the suit for partition. Therefore, I am of the view that the learned Trial Judge has committed errors of law and his findings cannot be supported.

7. The application is, therefore, allowed. The order impugned dated January 27, 2009 passed by the learned civil Judge (Senior Division), Fourth Court, Alipore, District – South 24 Parganas in Title Suit No.25 of 1998 is hereby set aside.

8. The learned Trial Judge shall proceed with the suit from the stage of hearing argument afresh.

9. There will be no order as to costs.

10. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.

(Prasenjit Mandal, J.)

